RECORD AND BRIEFS

No. 16-341

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

TC HEARTLAND LLC D/B/A HEARTLAND FOOD PRODUCTS GROUP,

Petitioner,

v.

KRAFT FOODS GROUP BRAND LLC,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

BRIEF OF AMERICAN BANKERS ASSOCIATION, THE CLEARING HOUSE PAYMENTS COMPANY L.L.C., FINANCIAL SERVICES ROUNDTABLE AND CONSUMER BANKERS ASSOCIATION AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

Whether 28 U.S.C. § 1400(b) is the sole and exclusive provision governing venue in patent infringement actions and is not to be supplemented by 28 U.S.C. § 1391(c).

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Rules

Supreme Court Rule 37 1

IDENTITY AND INTEREST OF *AMICI CURIAE*[1]

The American Bankers Association ("ABA") is the principal national trade association of the financial services industry in the United States. Founded in 1875, the ABA is the voice for the nation's $13 trillion banking industry and its million employees. ABA members are located in each of the fifty States and the District of Columbia, and include financial institutions of all sizes and types, both large and small. The ABA, whose members hold a substantial majority of domestic assets of the banking industry of the United States and are leaders in all forms of consumer financial services, often appears as *amicus curiae* in litigation that affects the banking industry.

The Clearing House is a banking association and payments company that is owned by the largest commercial banks and dates back to 1853. The Clearing House Payments Company L.L.C. owns and operates core payments system infrastructure in the United States and is currently working to modernize that infrastructure by building a new, ubiquitous, real-time payment system. The Payments Company is the only private-sector ACH and wire operator in the United States, clearing and

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1. Pursuant to Rule 37.6, counsel represents that he authored this brief in its entirety and that none of the parties or their counsel, nor any other person or entity other than the *amici*, made a monetary contribution intended to fund the preparation or submission of this brief. Pursuant to Rule 37.3(a), counsel represents that counsel of record received timely notice of the intent to file this brief and all parties have consented to the filing of this brief. Petitioner has filed with the Clerk of the Court a letter granting blanket consent to the filing of *amici* briefs; written consent of Petitioner and Respondent is being submitted contemporaneously with this brief.

settling nearly $2 trillion in U.S. dollar payments each day, representing half of all commercial ACH and wire volume. Its affiliate, The Clearing House Association L.L.C., is a nonpartisan organization that engages in research, analysis, advocacy and litigation focused on financial regulation that supports a safe, sound and competitive banking system.

The Financial Services Roundtable represents the largest integrated financial services companies providing banking, insurance, payment and investment products and services to the American consumer. Member companies participate through the Chief Executive Officer and other senior executives nominated by the CEO. FSR member companies provide fuel for America's economic engine, accounting for $92.7 trillion in managed assets, $1.2 trillion in revenue, and 2.3 million jobs.

Consumer Bankers Association ("CBA") is the only national financial trade group focused exclusively on retail banking and personal financial services-banking services geared toward consumers and small businesses. As the recognized voice on retail banking issues, CBA provides leadership, education, research, and federal representation for its members. CBA members include the nation's largest bank holding companies as well as regional and super-community banks that collectively hold two-thirds of the total assets of depository institutions.

Congress enacted a restrictive patent venue statute in response to uncertainty and abusive practices under the existing permissive venue regime. That was more than a century ago. Honoring this remedial purpose of the statute, this Court has consistently rejected

efforts to relax venue in patent suits against domestic companies. Specifically, it twice has interpreted a domestic corporation's residence—for venue purposes in a patent suit—to be *solely* its state of incorporation. *Fourco Glass Co. v. Transmirra Prods. Corp.*, 353 U.S. 222, 226 (1957); *Brunette Mach. Works, Ltd. v. Kockum Indus., Inc.*, 406 U.S. 706, 707 n.2 (1972). And twice the appeals court later disagreed.

Amici curiae have a strong economic interest in the resurrection of this restrictive interpretation. Their members and owners have faced numerous patent infringement suits in districts (i) where most *amici* members and owners are not incorporated and (ii) that are not the location of the underlying alleged infringing acts. More than 5% of companies targeted in suits by patent assertion entities are banks. *See* Stephen Joyce, *New Technologies Make Banks a Magnet for Patent Trolls*, Bloomberg BNA, Sept. 16, 2015, http://www.bna.com/new-technologies-banks-n17179936102/. Often, these suits lack merit but the cost of settling may be less than the cost of litigating until a ruling on the merits is issued. This burdens the defendant and can also allow patents to stand that should be invalidated. Applying the special venue statute's restriction on residence would be a step toward ending this serious problem in our nation's patent system.

SUMMARY OF ARGUMENT

This case can be decided without considering the public policies unique to patent law, under the principle that a judicial interpretation of a statute is "law." As such, the six-word subordination clause with which Congress

began the general venue statute—"except as otherwise provided by law"—defers to the special patent venue statute *as interpreted by this Court*. That interpretation therefore controls, meaning that a domestic corporation's "residence" for determining venue in a patent suit is *solely* its state of incorporation.

Public policies unique to patent law confirm the necessity and wisdom of this conclusion. Much of patent "law" cannot be found in the literal words of the Patent Act, but rather in this Court's interpretations thereof based in part on the core public policies embedded in our patent system. This is true of the "abstractness exclusion" to patent eligibility and the "doctrine of equivalents" in infringement determinations, for example. These same core public policies are just as important in interpreting where patent actions are adjudicated. Section III of the Argument below illustrates how the appeals court's rejection of this Court's restrictive interpretation of venue in patent actions has harmed core public policies of our patent system.

BACKGROUND

I. THE COURT HAS INTERPRETED TODAY'S SPECIAL PATENT VENUE STATUTE AND ITS PREDECESSOR AS EXCLUSIVELY CONTROLLING VENUE IN PATENT ACTIONS

The special patent venue statute, 28 U.S.C. § 1400(b), is unchanged since its enactment in 1948. As interpreted by the Court in 1957 and in 1972, this statute restricts patent suits against domestic corporations to two types of locations: (1) where the defendant resides, *i.e.*, is

incorporated, and (2) "where the defendant has committed acts of infringement and has a regular and established place of business." This case involves only the first prong.

The Court interpreted the statute's language "may be brought in the judicial district where the defendant resides" to "mean the state of incorporation only." *Fourco Glass Co. v. Transmirra Prods. Corp.*, 353 U.S. 222, 226 (1957); *accord Brunette Mach. Works, Ltd. v. Kockum Indus., Inc.*, 406 U.S. 706, 707 n.2 (1972). The Court also interpreted this special patent venue statute as controlling regardless of any broader general venue statute provisions. *Id.* The Court so interpreted today's special patent venue statute in view of the legislative history of the statute and its predecessor, including the legislation's twin goals of providing certainty and avoiding abuses under the broader venue provisions.

The Court relied in part on the legislative history of "§ 1400(b), as a special and specific venue statute applicable to [patent] litigation." *Fourco Glass Co.*, 353 U.S. at 223, 225-26. That legislative history expressly equated "resides" with "inhabits": "'Words 'inhabitant' and 'resident,' as respects venue, are synonymous.'" *Id.* at 226. "Inhabits" refers to "domicile" and a domestic corporation is domiciled only where it is incorporated. *Id.*

The Court also relied on its earlier interpretation of the predecessor special patent venue statute in *Stonite Prods. Co. v. Melvin Lloyd Co.*, 315 U.S. 561 (1942) (§ 48 of the Judicial Code, 28 U.S.C. § 109, is "the sole provision governing the venue of patent infringement litigation" and is not supplemented by the general venue statute). The *Stonite* Court looked to the reasons for enactment of

the predecessor special patent venue statute. *Id.* at 563. There were two. First, it "was intended to define the exact limits of venue in patent infringement suits" to remove the uncertainty caused by application of the general venue statute to patent actions. *Id.* at 565. Second, it "was a restrictive measure, limiting a prior, broader venue," in order to remedy the "abuses engendered by this extensive venue." *Id.* at 563, 566. Both reasons counseled reading the special venue statute as exclusively controlling venue in patent actions. *Id.* at 565-67.

The Court's interpretations of today's patent venue statute did *not* turn on language in the general venue statute. At the time of *Fourco*, the general venue statute, 28 U.S.C. § 1391, "regarded ... for venue purposes" corporate residency as having a much broader scope. *Fourco Glass Co.*, 353 U.S. at 223. Despite this broad statement of scope—"for venue purposes"—the Court held that this general venue statute did not govern or even supplement venue in patent actions, in light of "the reasons and purposes for, the adoption by Congress of the venue statute applying specifically to patent infringement suits." *Id.* at 225 (citing *Stonite*). The general venue statute was immaterial not because of language in that statute, but rather because of the language and reasons for enactment of the special patent venue statute.

II. THE APPEALS COURT TWICE HAS REFUSED TO FOLLOW THIS COURT'S INTERPRETATION OF TODAY'S SPECIAL PATENT VENUE STATUTE

As noted, the special patent venue statute has not changed since its interpretation by this Court in 1957

and 1972. Nor, of course, has its legislative history or that of its predecessor statute, revealing the Congressional purpose to remedy uncertainty and abuses caused by application of the general venue statute to patent cases. What has changed since 1957 is only the language of the general venue statute, which language was not a basis for this Court's restrictive interpretations of the special patent venue statute.

The first pertinent amendment of the general venue statute was in 1988, when Congress amended § 1391(c) to read that "[f]or purposes of venue under this chapter," a corporation "shall be deemed" to reside in any district where it is subject to personal jurisdiction. Thereafter, the Federal Circuit held that "[o]n its face, § 1391(c) clearly applies to § 1400(b), and thus redefines the meaning of the term 'resides' in that section." *VE Holding Corp. v. Johnson Gas Appliance Co.*, 917 F. 2d 1574, 1578 (Fed. Cir. 1990). The appeals court thereby returned patent litigation to the broad-venue era which Congress had rejected to remedy uncertainty and abuse.

The second amendment was in 2011, when Congress added a subordination clause to the beginning of the general venue statute, stating that the statute governs in all civil actions "[e]xcept as otherwise provided by law." 28 U.S.C. § 1391(a). Despite this express subordination clause, the appeals court maintained its broad-venue position. It held that this subordination clause did not require deference to this Court's narrow interpretation of "resides" for purposes of the patent venue statute. *In re TC Heartland LLC*, 821 F.3d 1338, 1342-43 (Fed. Cir. 2016).

III. THE CONSEQUENCES OF BROAD VENUE IN PATENT CASES

The Federal Circuit's broad-venue position has led to extreme imbalance.

A. ABOUT 40% OF PATENT LAWSUITS ARE FILED IN A SINGLE DISTRICT

Today, about 40% of patent lawsuits are filed in a single district. That would be an astonishing statistic even if that district were a hub of technology, or of the financial industry, or of company incorporations. But this district preferred by patent plaintiffs is none of those. It is the Eastern District of Texas.

In 2015, reportedly 42% of patent actions filed in our nation were filed in the Eastern District of Texas: "This district alone accounts for 42% of all patent filings in 2015." MARGARET S. WILLIAMS ET AL., FEDERAL JUDICIAL CENTER, PATENT PILOT PROGRAM: FIVE-YEAR REPORT 17-18 (April 2016), http://www.fjc.gov/public/pdf.nsf/lookup/Patent-Pilot-Program-Five-Year-Report-2016.pdf/$file/Patent-Pilot-Program-Five-Year-Report-2016.pdf ("FJC Report"). In 2016, reportedly 36.4% of patent actions were filed in the Eastern District of Texas. Lex Machina Q4 Litigation Update, Patent Litigation (Jan. 12, 2017), https://lexmachina.com/q4-litigation-update/.

Patent litigation is not a natural source of popular comedic relief. Yet, this concentration of patent suits in a single district is so pronounced that it has been mocked on HBO. *See Last Week Tonight with John Oliver: Patents* (April 19, 2015), http://www.hbo.com/last-week-tonight-

with-john-oliver/episodes/02/34-april-19-2015/video/ep-34-clip-patents.html.

B. PLAINTIFFS' PREFERRED FORUM IS MORE THAN FOUR TIMES LESS LIKELY TO STAY AN ACTION PENDING PATENT OFFICE REVIEW

Five years ago, Congress recognized that many issued patents are invalid in whole or in part so it passed The Leahy-Smith America Invents Act, 35 U.S.C. §100 *et seq.*, to combat that and other problems. This Act established expedited trial procedures in the Patent Office to review the patentability of issued patents. The history of these Patent Office trials confirms Congress's premise. As of October 31, 2016, the Patent Office had completed 1,261 "inter partes review" trials since the Act, and in 1,058 of these trials it had held unpatentable some or all of the patent claims at issue. *See* U.S. PATENT AND TRADEMARK OFFICE, PATENT TRIAL AND APPEAL BOARD STATISTICS (Oct. 31, 2016), at 10, https://www.uspto.gov/sites/default/files/documents/aia_statistics_october2016.pdf. It also had completed 145 "covered business method" patent trials, and in 141 of these it had held unpatentable some or all patent claims at issue. *Id.* at 11.

Naturally, most petitions for Patent Office review of issued patents are made in response to being sued in court for infringement of the patent. Unless the court stays the infringement suit, two patent review proceedings proceed in parallel, raising costs for the parties. While Congress did not require trial courts to stay patent infringement actions pending such Patent Office trial review, such stays are commonly granted—except in the district patent plaintiffs choose about 40% of the time.

In patent suits filed by non-practicing entities, plaintiffs' preferred district reportedly is more than four times less likely to stay the action pending Patent Office review than the national average. Douglas B. Wentzel, *Stays Pending Inter Partes Review: Not In The Eastern District Of Texas*, 98 J. Pat. & Trademark Off. Soc'y 120, 137 (2016) (In cases filed by non-practicing entities, "[a]s of August 31, 2015, the grant rate for stays pending IPR in the Eastern District was just 15.6%–4.65 times less than the nationwide average of 72.5% . . . ."). The Federal Judicial Center has reported a similar imbalance in patent pilot courts: "The Eastern District of Texas, for example, represents 50% of the cases in the database, but only 20% of all stays for PTO or ITC review. The Northern District of California, on the other hand, represents 6% of the patent cases in the database, but 23% of the stays for PTO or ITC review." FJC Report at 18.

C. PLAINTIFFS' PREFERRED FORUM IS ABOUT 7 TIMES LESS LIKELY TO REACH JUDGMENT

The most obvious purpose of patent litigation is to enforce valid patents against infringement. Another important purpose is to invalidate improperly issued patents. That, of course, requires that the action reach judgment. Patent actions filed in patent plaintiffs' preferred district are less likely to reach judgment, as reported by the Federal Judicial Center. "[I]n the Eastern District of Texas a mere 1% of cases are terminated by judgment, whereas overall, cases resulting in judgment represent 7% of all terminations." FJC Report at 33 (addressing cases in "patent pilot" districts).

ARGUMENT

I. JUDICIAL INTERPRETATIONS ARE "LAW"

The correct answer in this case is provided by the principle that judicial interpretation of a statute itself constitutes "law." Specifically, this Court's interpretation of the word "resides" in the special patent venue statute, § 1400(b), which conflicts with what § 1391(c) "deem[s]" as corporate residency, is "law" within the scope of § 1391(a)'s subordination clause "except as otherwise provided by law." This Court need look no further than two of its most important and famous decisions to confirm that judicial interpretations of statutes are themselves "law."

In *Marbury v. Madison*, this Court famously held that "It is emphatically the province and duty of the Judicial Department to say what the law is. Those who apply the rule to particular cases must, of necessity, expound and interpret that rule. If two laws conflict with each other, the courts must decide on the operation of each." 5 U.S. 137, 177 (1803).

And in *Erie R. Co. v. Tompkins*, 304 U.S. 64 (1938), this Court held that "laws of the several states" in § 34 of the Federal Judiciary Acts of September 24, 1789[2] include not only "positive statutes of the state" but also "its unwritten law," i.e., the state's common law. *See also King v. Order of United Commercial Travelers of Am.*, 333 U.S. 153, 157 (1948) ("the Erie R. Co. case decided that 'laws,' in this context, include not only state statutes,

2. Known as the Rules of Decision Act, this statute is now 28 U.S.C. § 1652.

but also the unwritten law of a state as pronounced by its courts").

In other contexts, this Court also has included decisional law within the definition of "law." Regarding a statute that stated it applied in the absence of exceptions made in "national laws or regulations," this Court held: "The term law in our jurisprudence usually includes the rules of court decisions as well as legislative acts." *Warren v. United States*, 340 U.S. 523, 526 (1951). In construing the federal question jurisdictional statute, 28 U.S.C. § 1331, which applies to, among other actions, those "arising under the . . . laws . . . of the United States," this Court held that the word "laws" should have its "natural meaning," and thus concluded the statute "will support claims founded upon federal common law as well as those of a statutory origin." *Ill. v. City of Milwaukee, Wis.*, 406 U.S. 91, 100 (1972). And, when construing the phrase "a law of the United States," as used in the perjury statute, this Court held the phrase "is not limited to statutes, but includes as well Rules and Regulations which have been lawfully authorized and have a clear legislative base and *also decisional law*." *United States v. Hvass*, 355 U.S. 570, 575 (1958) (internal citations omitted) (emphasis added).

Finally, when Congress intends to limit what the term "law" includes, it does so expressly, as it has done in the habeas corpus statute, which provides that relief is not available from a claim adjudicated on the merits in state court unless the claim "resulted in a decision that was contrary to, or involved an unreasonable application of, *clearly established Federal law, as determined by the Supreme Court of the United States*." 28 U.S.C. § 2254(d)(1) (emphasis added).

Logic confirms these precedents. To disregard a statute's judicial interpretation when determining whether "law" "otherwise provides," would be unworkable. A statute has no meaning or force without first being interpreted. Even "plain meaning" is an interpretation. "X" is no more "law" when a statute says "X" than when it is silent but interpreted by this Court to mean "X."

Therefore, the Court can reconfirm *Stonite*, *Fourco* and *Brunette* without considering public policies unique to patent law, under the principle that a judicial interpretation of a statute is "law" to which Congress defers in its standard subordination clause "except as otherwise provided by law."

II. MUCH OF "PATENT LAW" CONSISTS OF JUDICIAL INTERPRETATION OF STATUTES, BASED IN PART ON CORE POLICIES OF PATENT LAW

Much of "patent law" consists of this Court's interpretations of the Patent Act, and many of those interpretations turned on consideration of core patent policies. This is true, for example, of the abstractness exclusion and the doctrine of equivalents.

The abstractness exclusion to patent eligibility is an example of this Court providing patent law via statutory interpretation based in part on consideration of our patent system's core policies. While 35 U.S.C. § 101 states that "any new and useful process, machine, manufacture, or composition of matter," may be patentable, this Court "has long held that this provision contains an important implicit exception" that excludes abstract ideas. *Mayo*

Collaborative Servs. v. Prometheus Labs., Inc., 132 S. Ct. 1289, 1293 (2012). This exclusion is grounded on the policy "concern that patent law not inhibit further discovery by improperly tying up the future use of these building blocks of human ingenuity." *Id.* at 1301.

The "law" of patent infringement likewise rests on this Court's interpretation of the statute, again influenced by core policies of our patent system. Despite the Patent Act's requirement that patents particularly point out and distinctly claim the invention to be protected, 35 U.S.C. § 112(b), this Court has interpreted "infringement" under 35 U.S.C. § 271 to include "equivalents" of the claimed invention outside the literal scope of the claims. *Graver Tank & Mfg. Co. v. Linde Air Prods. Co.*, 339 U.S. 605 (1950). The reason is to prevent "verbalism" from depriving an inventor "of the benefit of his invention [which] would foster concealment rather than disclosure of inventions, which is one of the primary purposes of the patent system." *Id.* at 607. In 2002, this Court held that the doctrine of equivalents is "settled law." *Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co.*, 535 U.S. 722, 739 (2002).

III. CORE PURPOSES OF PATENT LAW ARE HARMED BY THE VENUE IMBALANCE THAT HAS RESULTED FROM EASY FORUM SHOPPING

The appeals court's broad-venue position has led to easy forum shopping and a massive imbalance in the distribution of patent suits in the United States. This in turn undermines at least two core purposes underlying our patent laws: (1) favoring strict post-issuance scrutiny

of government-granted patent monopolies, and (2) favoring efficient patent licensing and follow-on innovations. Consideration of core patent law policies in this venue context is not novel, as this Court did just that in *Stonite* and *Fourco*. *Amici* request the Court to take the same path again to reach the same conclusion again.

A. EASY FORUM SHOPPING UNDERMINES STRICT SCRUTINY OF GOVERNMENT-GRANTED MONOPOLIES

The Court long has viewed post-issuance scrutiny of patent monopolies as essential to our patent system. The "important public interest in permitting full and free competition in the use of ideas which are in reality a part of the public domain," led the Court to permit patent licensees to challenge validity because otherwise, "[i]f they are muzzled, the public may continually be required to pay tribute to would-be monopolists without need or justification." *Lear, Inc. v. Adkins*, 395 U.S. 653, 670 (1969). Post-issuance scrutiny of patents is necessary not only to cancel invalid patents but also to restrict the scope and use of valid patents: "[o]nce the patent issues, it is strictly construed, it cannot be used to secure any monopoly beyond that contained in the patent, the patentee's control over the product when it leaves his hands is sharply limited, and the patent monopoly may not be used in disregard of the antitrust laws." *Sears, Roebuck & Co. v. Stiffel Co.*, 376 U.S. 225, 230 (1964) (citations omitted). For example, a patent owner "should not be . . . allowed to exact royalties for the use of an idea . . . that is beyond the scope of the patent monopoly granted." *Blonder-Tongue Labs., Inc.* v. *Univ. of Ill. Found.*, 402 U.S. 313, 349–350 (1971).

An efficient and fair patent litigation system promotes all of these public policies of our patent system. The Patent Act allows those accused of infringement to defend on the ground that the patent is invalid or unenforceable. It allows trial judges to construe patent claims, often more narrowly than the scope the patent owner had asserted in its enforcement efforts. Patent litigation identifies and cancels invalid patents, defeats overly broad assertions of patent scope, and penalizes misuse of patent monopolies—all serving the public interest. Conversely, easy forum shopping defeats each of these purposes.

Easy forum shopping often allows patent owners to choose the forum least likely in the nation to allow a speedy or low-cost determination of invalidity or non-infringement. For example, patent owners with questionable patents and/or unreasonable infringement assertions naturally will flock to the district least likely to stay a patent suit pending Patent Office review proceedings, least likely to grant an early motion to dismiss for patent invalidity, least likely to allow an early summary judgment motion of non-infringement or invalidity, and least likely to enter judgment of patent invalidity.

In sum, the heavy concentration of patent suits in a single preferred forum of patent plaintiffs does not merely disadvantage individual defendants. It undermines the public policy favoring strict scrutiny of issued patents.

Simple economics demonstrates that easy forum shopping especially shields the weakest patents from the necessary scrutiny. Patent owners with questionable patents or infringement allegations often seek and extract settlements under the cost of defense. *See, e.g.*, Ranganath

Sudarshan, *Nuisance-Value Patent Suits: An Economic Model and Proposal*, 25 Santa Clara Computer & High Tech. L.J. 159 (2009). This values the patent asset not on its legitimacy or contribution to the art but rather on avoiding the cost of proving that the asset is invalid or inapplicable. When the value of the asset is therefore directly derived from the amount of defense costs that will be incurred prior to a ruling on the merits, such patent owners rationally choose the forum that imposes the greatest costs to obtain a merits ruling. Consequently, patents that should promptly be invalidated or declared inapplicable to modern technology instead, by virtue of cost-of-defense settlements, survive to tax or cloud what ought to be in the public domain.

Today, perhaps the single greatest factor in the cost of defending a patent suit is the district court's willingness to stay the suit pending Patent Office review. A patent-infringement defendant can easily spend ten times more money defending itself in court than it spends in a Patent Office trial. Patent plaintiffs naturally are more likely to file suit in a district that is more than four times less likely to stay the expensive patent infringement action pending the inexpensive Patent Office trial.

This harm forum shopping causes to a core purpose of our patent system supports the statutory interpretation urged by Petitioner and *amici*, which interpretation restricts such forum shopping.

B. EASY FORUM SHOPPING UNDERMINES PATENT LICENSING, AND INNOVATION

Easy forum shopping also encourages a sue-first regime that promotes litigation over negotiation. This, of course, would be unwelcome in any area of law, but it is particularly antithetical to our patent system. Our patent system's promotion of innovation depends not only on motivating first innovators by issuing them patents but also on motivating subsequent innovators to invent around those issued patents. These dual engines of innovation fostered by our patent system depend on a well-functioning system of patent notices and licensing.

More specifically, issuing patents on true inventions can promote innovation partly by encouraging others to either further invent to avoid those patents (perhaps further advancing the arts) or to instead take a license to use the patented technology (rewarding the first innovator and spreading the benefits of the invention). Multiple Patent Act provisions further this purpose. For example, § 287 encourages patent applicants to give potential infringers actual notice of published patent applications, and § 112 mandates particular and distinct patent claims, in part to provide clear notice to follow-on innovators who want to innovate around a patent without risking suit.

Properly construed, the special patent venue statute's restriction on forum shopping also furthers this core purpose of the patent system. Without this statute, properly interpreted, patent owners often are free to choose virtually any forum of their liking, and become loath to provide pre-suit notice of infringement for fear that they might forfeit the forum of their choice, should the alleged

infringer respond with a declaratory judgment action in a different forum. But the calculus is different under the restrictive venue dictate of § 1400(b) limiting patent suits to districts where the defendant domestic corporation is incorporated or has an established place of business and has allegedly infringed. That venue restriction reduces the strategic forum-shopping disincentive to do what the patent system encourages—provide notice of the patent and alleged infringement and attempt to resolve the matter without litigation.

In sum, interpreting the patent venue statute to allow easy forum shopping defeats core purposes of our patent system.

CONCLUSION

This Court should again hold that the patent venue statute alone establishes where a domestic corporation may be sued for patent infringement.

Respectfully submitted.

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